

### **Remarks**

Claims 34, 38, 40-45 and 47-63 are now pending in the application, with claims 38, 40-45 and 47-63 having been withdrawn from consideration. Claims 1-33, 35-37, 39, and 46 are cancelled. Claim 34, the remaining claim at issue, has been amended. No subject matter was added.

#### **Claim Rejections – 35 USC §112**

##### **1. Rejection for Failure to Comply with Written Description Requirement**

The Examiner rejected claim 34 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. Claim 34 has been amended, removing all reference to the complete dissolution of ten parts Dead Sea salts in one part water, in order to overcome this rejection. In view of the claim amendment, Applicant respectfully requests that the rejection of claim 34 under 35 U.S.C. 112, first paragraph, be withdrawn.

##### **2. Rejection for Failure to Distinctly Claim Subject Matter Comprising Invention**

The Examiner also rejected claim 34 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as his invention. Claim 34 has been amended as discussed below to overcome these rejections.

###### **a. “Composition”**

The Examiner cited the use of the phrase “a topical composition comprising” in claim 34 as being inconsistent with the claimed invention as subsequently recited. Specifically, the Examiner stated that “[t]he first line of the claim recites ‘a topical composition comprising’

implying that it is a single composition . . .” But the term “composition,” without modification, has been used in the claim language of the prior art of record to describe a variety of inventions in this field of technology, including: an aqueous solution,<sup>1</sup> an emulsified lotion composition,<sup>2</sup> and a multi-phase composition.<sup>3</sup> The broad use of “composition” in prior art illustrates that the use of this term is not typically confined only to single-phase compositions.

To avoid inconsistency, and to eliminate any impression that the invention is a single-phase composition, the phrase “single phase” has been removed from claim 34, such that “wherein the combination of said first ingredient with said second ingredient results in a single phase topical composition” has been amended to read “wherein the combination of said first ingredient with said second ingredient results in a topical composition.”

**b. “Alginate Derivative”**

The Examiner stated: “[It is unclear] what the applicant intends to convey by ‘alginate derivative.’ Alginate itself is a derivative of alginic acid. There is no specific definition of the term in the specification.” Applicant traverses this rejection and requests reconsideration.

According to MPEP § 2173.05(a), “[t]he meaning of every term used in a claim should be apparent from the prior art or from the specification and drawings at the time the application is filed.” MPEP § 2173.05(t) further states that failure to identify the entire structure of a chemical formula does not render the claim indefinite. As described below, the meaning of the term “alginate derivative” is apparent from the prior art, even if it does not identify the entire structure of a chemical formula.

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<sup>1</sup> Patent Nos. 5,827,870 (claim 1) and 4,943,432 (claim 1).

<sup>2</sup> Patent No. 5,922,313 (claim 2).

<sup>3</sup> Patent Nos. 5,720,961 (claim 1) and 5,885,593 (claim 1).

The term alginate refers generally to a linear block copolymer of  $\alpha$ -L-guluronic acid and  $\beta$ -D-mannuronic acid.<sup>4</sup> Different alginates have varying block sizes or alternating segments based on the seaweed from which they originate.<sup>5</sup> The term “alginate derivative” is intended to encompass the multiple different compounds that are derived from reactions with alginic acids, or which have an alginate base. The term “alginate derivative” has been used, without need of definition, in scientific journals<sup>6</sup> and patents<sup>7</sup> to describe compounds that are derived from either alginic acid or alginate and are desirable for their thickening and stabilizing properties, the context in which the term is used in claim 34. Since the term “alginate derivative” is generally known to those skilled in the art of the invention’s subject matter, Applicant respectfully asserts that this rejection has been overcome.

#### c. Markush Language

The Markush language of claim 34 has been amended to omit the word “essentially.” As a result, Applicant respectfully asserts that this rejection has been overcome.

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<sup>4</sup> <http://www.cybercolloids.net/library/alginate/introduction.php>

<sup>5</sup> <http://www.cybercolloids.net/library/alginate/introduction.php>

<sup>6</sup> See Eilish Broderick, et al., *The Characterisation of a Novel, Covalently Modified, Amphiphilic Alginate Derivative, Which Retains Gelling and Non-Toxic Properties*, 298 J. COLLOID INTERFACE SCI., 154 (2006) (describing Alg-C4, which is the result of butanol linked by esterification to alginate); Frederick F. Shih, *Edible Films from Rice Protein Concentrate and Pullulan*, 73 CEREAL CHEM. 406, 406 (1996) (“macromolecular interaction involving the alginate derivative propylene glycol alginate”).

<sup>7</sup> See Patent No. 4,348,418, claim 14 (“together with a slurry . . . containing an alginate derivative”); Patent No. 4,065,578 , claim 1 (“consisting of xanthan gum or an alginate derivative”); *id.*, claim 9 (“alginate derivative is selected from the group consisting of calcium-sodium alginates, sodium alginates, ammonium alginates, ammonium alginate, potassium alginates, propylene glycol alginates and mixtures thereof”).

Based on the foregoing, Applicant respectfully requests that the rejections to the claims under 35 U.S.C. 112, second paragraph, be withdrawn.

**Conclusion**

Applicant respectfully submits that these Amendments and Response address all of the Examiner's rejections and places the Application in condition for allowance. A Notice of Allowance is earnestly solicited. If the Examiner believes that a teleconference would be of value in expediting the allowance of the pending claims, the Applicant respectfully requests that the Examiner call the undersigned at the telephone number referenced below. Applicant requests an extension of time of two months to respond to the present action, the three-month statutory period having expired on June 6, 2006. Accordingly, the Applicant authorizes the Commissioner to charge a two-month extension fee to Deposit Account No. 50-1901 (Reference No. 17649-20). If any additional fees are necessary, the Commissioner is also authorized to charge or credit any such fees or overpayment to the aforementioned account number.

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Respectfully submitted,

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